IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9320 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Petitioner(s)

Versus

KAMALKANT SHAMBHUBHAI VAGHASIYA - Respondent(s)

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Appearance :
MR KL PANDYA AGP for Petitioner No(s).: 1,2,3.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 18/07/2005

ORAL JUDGMENT

1.0 The petitioner State has challenged the award dated 14.08.1998 passed by the Labour Court, Junagadh, in I.S.O. No.18 of 1997, whereby it was held that retrenchment by the petitioner was without following the

due process of law.

2.0 The brief facts of the case are that the respondent workman filed an application u/s.13(A) of the Industrial Employment (Standing Order) Act, 1946 inter alia praying that he is serving as Jr. Clerk with the petitioner since 18.11.1980 and that vide letter dated 29.09.1984 he was retrenched from service.

2.1 Pursuant to the above, the respondent filed a suit before the Court of the learned Civil Judge (S.D.), Junagadh which was numbered as Regular Civil Suit No.765 of 1984. Thereafter, another application being I.S.O. No.18 of 1997 was filed before the Labour Court, Junagadh. The Labour Court, Junagadh, by impugned award passed the aforesaid directions. Hence, this petition.

3.0 Mr. KL Pandya learned AGP has contended that the Labour Court has committed in error by entertaining the said application since the service conditions of the respondent herein will be governed by the Bombay Civil Service Rules and not by the Standing Order.

4.0 Though served none appears on behalf of the

respondent. I have heard learned AGP for the petitioner. Having gone the documents placed on record, it transpires that the service conditions of the respondent herein will be governed by the Bombay Civil Service Rules and not by the Standing Order. The respondent workman was appointed without passing the requisite examination under the Service Rules.

4.1 Moreover, the Labour Court has committed an error in considering the petitioner Department an “Industry” within the provisions of the Industrial Disputes Act, 1947. Hence, I am of the opinion that the impugned order of the Labour Court is illegal and perverse and deserves to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The impugned award dated 14.08.1998 passed by the Labour Court, Junagadh, in I.S.O. No.18 of 1997 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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